
(2006) 02 SC CK 0071

In the Supreme Court Of India

Case No : Civil Appeal No's. 553-554 and 4382 of 2001

North West Switchgear Limited

APPELLANT

Vs

Commnr. of Central Excise, New Delhi

RESPONDENT

Date of Decision : 14-02-2006

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q, 9(2)

Central Excises and Salt Act, 1944 — Section 11A, 35E(2), 35L

Citation : (2006) 2 BomCR 545 : (2006) 195 ELT 134 : (2006) 2 JT 405 :
(2006) 2 SCALE 338 : (2006) 3 SCC 86 : (2006) 145 STC 169

Hon'ble Judges : Ashok Bhan, J;Arun Kumar, J

Bench : Division Bench

Advocate : Rohina Nath and Umesh Kumar Khaitan, in C.A. Nos. 553-554 of 2001 and Rajiv Dutta, M.F. Humayuwisa and R. Nedumaran, in C.A. No. 4382/200, for the Appellant; Harish Chandra Arijit Prasad and B.K. Prasad, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhan, J.—This order shall dispose of the two sets of Civil Appeals. The Civil Appeal Nos. 553-554 of 2001 filed by M/s. North West Switchgear Limited and the Civil Appeal No. 4382 of 2001 filed by M/s. Kesharbai Electronics Pvt. Ltd.; (for short "the appellants"). As the point involved in both the sets of appeal is similar, they are being disposed of by a common order.

2. The Civil Appeal Nos. 553-554 of 2001 have been filed by M/s. North West Switchgear Limited u/s 35L of the Central Excise Act, 1944 (for short "the Act") against final order No. 120- 121/2000-B passed by the Customs Excise & Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E/506/95-B and E/1554/96-B dated 20.1.2000 whereby the Tribunal upheld the orders of authorities below to drop the demands of Rs. 2,02,506.88 & Rs. 93,514.38 raised on the appellants by the respondent herein, but, held that the 'fan regulators' manufactured by the appellants were classifiable under sub-heading 8414.99 as opposed to 8414.20 as an accessory of the fans.

3. The Civil Appeal No. 4382 of 2001 filed by M/s. Kesharbai Electronics Pvt. Ltd., has also been filed u/s 35L of the Act against the final order passed by the Tribunal at Mumbai dated 16.11.2000 in Appeal No. E/1002/R/95 Mumbai, whereby the Tribunal rejected the appeal filed by the appellants and confirmed the classification of the goods under sub-heading 8414.99 as classified by the Assistant Collector of Central Excise & Customs, Ahmednagar and confirmed by the respondent in Appeal bearing No. A/418/1995 dated 29.9.1995.

4. The facts of Civil Appeal No. 553-554 of 2001 are:

The appellants are engaged in the manufacture of switches, fan regulators and distribution board etc. falling under Chapter sub-heading No. 8536.90, 8414.20 & 8537.00 of the Central Excise Tariff Act, 1985 (hereinafter referred to as "the Tariff Act"). The appellants classified 'fan regulators' under sub-heading No. 8414.20 of Tariff Act, which covers electric fans, on the strength that there is no other use of these items and these are used principally and solely with the electric fans. The classification list filed by the appellants for clearing the same under sub-heading 8414.20 was approved by the Assistant Commissioner.

5. The appellants were served with demand-cum- show cause notices dated 3.12.1993 and 28.6.1994 for the period March 1993 to February 1994 to show cause to the Deputy Commissioner of Central Excise, Faridabad as to why the differential duty amounting to Rs. 2,02,506.88 and Rs. 93,514.38 should not be demanded and recovered under Rule 9(2) read with Section 11A of the Act on the contention that 'fan regulators' are nothing but 'accessories' of electric fans and the same are classifiable under sub-heading 8414.99 of the Tariff Act which attracts duty @ 15% ad valorem instead of 10% ad valorem already paid by the appellants resulting in short payment of duty as aforementioned. The appellants submitted their reply to the show-cause- notices contending therein that they had paid the duty correctly and there was no short levy of duty as alleged by the show-cause-notice; that the fan regulators are correctly classifiable along with the fans according to the Section Notes/Chapter Notes appended to Chapter 84 of the Tariff Act, 1985. It was also submitted that the appellants are covered by Board Circular No. 7/87 dated 24.06.1987 which was in force till the issuance of the CBEC Circular No. 192/26/96-CX dated 27.06.1996.

6. Authority in original in show cause notice dated 3.12.1993 held that the fan regulators were classifiable under the sub-heading 8414.20 as had been contended by the assessee. It was also held that the Board Circular No. 7/87 dated 24.6.1987 was applicable to the facts of the case. The Commissioner of Central Excise reviewed the order passed by the authority in original in exercise of its powers u/s 35E(2) and directed that an appeal be preferred accordingly and appeal was filed. The appellants filed their memorandum of cross objection. The learned Commissioner upheld the order passed by the authority in original holding that 'fan regulators' were/are classifiable under sub-heading 8414.20 of the Tariff Act and not under 8414.99 and rejected the appeal. Being aggrieved with the order passed by the Commissioner of Appeals, the revenue preferred

appeal No. E/Appeal No. 506/95-B before the Tribunal.

7. Against the show-cause-notice dated 28.6.1994 the authority in original stuck with its view in the earlier order and held that the 'fan regulators' were classifiable under the sub-heading 8414.20 and not under 8414.99 and dropped the demand. Commissioner (A) did not agree with the order in original and taking a contrary view held that the goods were classifiable under sub-heading 8414.99 and not under 8414.20. The appellants preferred appeal No. E/Appeal No. 1554/96-B against the order of the Commissioner of Appeals before the Tribunal. These two sets of appeals were clubbed together and disposed of by the Tribunal by a common order dated 20.1.2000.

8. In the Civil Appeal No. 4382 of 2001 the authority in original held that the goods were classifiable under sub-heading 8414.99 and confirmed the demand of Rs. 9,87,086.86 and imposed a penalty of Rs. 75,000/- under Rule 173Q of the Central Excise Rules, 1944 and directed the appellants to pay these amounts immediately. In the appeal, the Commissioner of Appeals maintained the order in original except that the amount of penalty was reduced to Rs. 10,000/-. Being aggrieved, the assessee filed an appeal before the Tribunal and the Tribunal vide its order dated 25.10.2000 maintained the order passed by the Commissioner of Appeals.

9. The common issue involved in both the sets of appeals is, whether the 'fan regulators' are classifiable under the sub-heading 8414.20 along with fans or under the sub-heading 8414.99 as 'parts and accessories'.

10. Learned Counsel appearing for the appellants contended that during the relevant period Central Board of Excise and Customs, Circular No. 7/87 dated 24.6.1987 was in operation and therefore the fan regulators would be classifiable under the sub-heading 8414.20 along with fans. That the department cannot argue against the Board circular which is binding on them. Accordingly it was contended that the department cannot now claim that the fan regulators were classifiable under sub-heading 8414.99 at the relevant time. Relying upon the sub-note (b) of Note 2 to Section XVI, it was contended that since the 'fan regulators' were suitable for use solely or principally with the electric fan the same are classifiable with the entry relating to electric fans i.e. 8414.20. It is also submitted by the learned Counsel for the appellants that the regulators are classifiable under the sub-heading 8414.80 but they have not given any reasons for this submission.

11. Learned Counsel appearing for the respondents has countered both the submissions. We do not find any force in the submission made by the counsel for the appellants. To understand the issue, heading 8414 is reproduced as under:

12. Chapter heading 8414 applies to air or vacuum pumps, air or other gas compressors and fans ventilating or recycling hoods. Sub-heading 8414.10 applies to 'gas compressor'; sub-heading 8414.20 applies to 'electric fans' and 8414.80 is a residuary sub-heading being "Others" which will apply to all other

goods covered by chapter heading, other than gas compressors and electric fans. The 'Fan regulators' will not be classifiable under the sub-heading 8414.80. There are two sub-headings under 'parts and accessories'. Sub-heading 8414.91, is in relation to the goods covered by the sub-heading 8414.10 whereas the sub-heading 8414.99 is a residuary class which applies to the goods covered by other sub-heading of chapter heading 8414.

13. The issue therefore is, whether the 'fan regulators' are classifiable under 8414.20 along with fans or under sub-heading 8414.99 as "parts & accessories". The appellants have placed reliance on Board's Circular No. 7/87 dated 24.6.1997 in which it has been clarified that the resistance type and choke type fan regulators are classifiable under sub-heading 8414.20 along with the fans. The Tribunal has held that the 'fan regulators' would be classifiable under sub-heading 8414.20, if cleared along with fans but if they are cleared only as regulators (not along with fan), they would be classifiable under sub-heading 8414.99.

14. According to Note 2 of Section XVI of the Schedule to the Central Excise Tariff Act, parts which are goods included in any of the headings of Chapter 84 or Chapter 85 are in all cases to be classified in their respective headings. There is a separate entry for 'parts & accessories' of goods falling under chapter heading 8414 and as such the regulators, if cleared "not along with fans", will merit classification under the sub-heading 8414.99 being 'parts/accessories' of the fan. This position has been clarified by the CBEC Circular No. 192/26/96-CX dated 27.3.1996, which reads as under:

I am directed to invite your kind attention to Circular No. 7/87-CX, dated 24.6.1987 wherein it was clarified that the resistance type and choke type fan regulators, are classifiable under sub-heading 8414.20 of the Schedule to the Central Excise Tariff Act, 1985, along with fans. Doubts have been expressed regarding the classification when the fan regulators are manufactured and cleared separately, not in combination with fans. It is seen that though the electric fans can function without the regulators, the regulators are needed as they limit and control the flow of the electricity and consequently control the speed of electric fans.

The matter has been examined, it is clarified that when 2 regulators are cleared along with fans as a whole, they are classifiable as electric fans under sub-heading 8414.20. When fan regulators are cleared separately not in combination with fans, they are classifiable as 'Parts and accessories of electric fan' under sub-heading 8414.99 of the Schedule to the Central Excise Tariff Act, 1985.

15. This view also finds support from the General Notes to Section XVI of HSN under heading "Accessory Apparatus". The explanatory note provides that accessory instrument e.g. regulators, presented with machine or apparatus to which they normally belongs are classified with that machine or apparatus, if they are designed to measure check, control or regulate one specific machine or

apparatus. Therefore, if fan regulators are manufactured by a unit like the appellants and cleared as such and not along with fan, it will be classifiable under the sub-heading 8414.99. If the contention of the appellants is accepted that the regulators have to be classified under 'electric fans', whether sold with the fan or separately, then no 'part or accessory' will be covered by heading 8414.99. In the Board's circular No. 7/87, the Board clarified that 'fan regulators' will not be classified under Chapter 85 as Electrical Resistors and their classification under sub-heading 8414.20 along with fan would be appropriate. The issue before the Board was not that, when regulators were cleared as such without fans, would be classifiable under sub-heading 8414.99 or that they would be classifiable under 8414.20. Accordingly, the Board clarified in Circular No. 192/26/96 dated 27.3.96 that when the regulators are cleared along with the fans as a whole, they are classifiable under sub-heading 8414.20 but when 'fan regulators' are cleared separately not in combination with the fans they are classifiable as "parts & accessories of electrical fans" under sub-heading 8414.99 of the Schedule to the Tariff Act. There is a separate sub-heading of "parts and accessories" in heading 8414. The Sub-heading 8414.91 covers parts and accessories "of goods covered by the sub-heading 8414.10" and the sub-heading 8414.99 covers parts and accessories of "other" goods under the heading 8414 and the sub-headings 8414.20 and 8414.80. 'Fan regulators' being accessories of 'electric fan' would thus be covered under the sub-heading 8414.99.

16. Accordingly, we do not find any merit in these appeals and hold that the 'fan regulators' manufactured by the assessee, which are sold as such "without the electric fan" would be classifiable under sub-heading 8414.99 as accessories of fans.

17. The Tribunal, in Civil Appeal No. 553-554 of 2001 filed by M/s. North West Switchgear Limited, has held that differential duty cannot be demanded from the appellants against which the revenue has not filed any appeal.

18. For the reasons stated above, we do not find any merits in Civil Appeal Nos. 553-554 of 2001 and dismiss the same.

19. The order passed by the Tribunal in Civil Appeal No. 4382 of 2001 in so far as the classification is concerned is confirmed but keeping in view the facts and circumstances, the penalty of Rs. 10,000/- imposed on the appellants is set aside. Costs shall follow the event.